



Pillsbury
Winthrop
Shaw
Pittman LLP

2300 N Street NW
Washington, DC 20037-1128

Tel 202.663.8000
Fax 202.663.8007
www.pillsburylaw.com

February 13, 2006

Jarrett S. Taubman
Phone: 202.663.8961
jarrett.taubman@pillsburylaw.com

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: EX PARTE SUBMISSION
WT Docket 05-265
Reexamination of Roaming Obligations of
Commercial Mobile Radio Service Providers

Dear Ms Dortch:

NY3G Partnership (“NY3G”) hereby responds to inaccurate and misleading statements made by Wireless Communications Association International, Inc. (“WCA”) in Reply Comments filed on January 26, 2006 in the above-referenced proceeding. WCA argues that the Commission should not consider NY3G’s request to expand CMRS roaming obligations to explicitly encompass EBS/BRS band providers because the Commission allegedly rejected such requests in the *Sprint Nextel Merger Order* and the 2004 *EBS/BRS Order*.¹ The fact, however, is that neither of these orders reached any conclusion with respect to the desirability of generally-applicable EBS/BRS roaming obligations.

In the *Sprint Nextel Merger Order*, the Commission considered only whether new EBS/BRS roaming obligations were necessary to avoid the merger-specific harms extending from the merger of Sprint Corporation and Nextel Communications, Inc.² The Commission did

¹ See *Applications of Nextel Communications, Inc. and Sprint Corporation*, Memorandum Opinion and Order, FCC 05-148, at ¶ 162 (rel. Aug. 8, 2005) (“*Sprint Nextel Merger Order*”); *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (“*EBS/BRS Order*”).

² *Sprint Nextel Merger Order* at ¶ 23 (citations omitted) (“Despite the Commission’s broad authority, we have held that we will impose conditions only to remedy harms that arise from the
(... continued)

not consider (and certainly did not reject) any generally-applicable roaming obligation for EBS/BRS band providers. Instead, the Commission suggested that such obligations should be considered in the context of a rulemaking proceeding.³

The *EBS/BRS Order* offered no discussion of the need for or desirability of any EBS/BRS roaming obligation.⁴ The portions of the *EBS/BRS Order* cited by WCA express only the Commission's desire to maintain technological neutrality in and extend *Secondary Markets* leasing policies to the EBS/BRS band. See *EBS/BRS Order* at ¶¶ 132, 179-181.

In today's CMRS marketplace, roaming is essential to the facilitation of robust, self-sustaining competition, as the Commission has recognized.⁵ Dominated as it is by one or two providers, roaming will be even more critical in ensuring competition in the EBS/BRS band. Accordingly, NY3G urges the Commission to impose generally-applicable roaming obligations on all EBS/BRS band providers that offer CMRS, to ensure that consumers will be able to use these next-generation services on a nationwide basis.

(... continued)

transaction Thus, we do not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.”).

³ *Id.* at ¶ 162 n.381, citing *Comcast AT&T Order*, 17 FCC Rcd at 23246, at ¶ 30 (“[I]ssues related to industry-wide trends are more appropriately considered in rulemaking proceedings, rather than in our merger review processes.”).

⁴ The only roaming-related issue raised in the underlying *Notice of Proposed Rulemaking* was whether the Commission should adopt technical standards to facilitate EBS/BRS interoperability and roaming. See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands Part 1 of the Commission's Rules*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 18 FCC Rcd 6722, at ¶ 142 (2003).

⁵ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd 9462, at ¶ 11 (1996) (“[R]oaming capability may be a key competitive consideration in the wireless marketplace, [such] that newer entrants may be at a competitive disadvantage vis-à-vis incumbent wireless carriers if their subscribers have no ability to roam on other networks.”).

Marlene Dortch
February 13, 2006
Page 3

Very truly yours,

/s/

Bruce D. Jacobs
Tony Lin
Jarrett Taubman
Counsel for NY3G Partnership